IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32 (2) (b)
Description of Case

Writ Petition No. 720 of 2002 (M/B)

Dated of decision: 1th October, 2004

For the approval of :

Hon'ble Chief Justice V.S. Sirpurkar.

Hon'ble Mr. Justice Irshad Hussain.

- Whether the order/judgment should be sent to the reporters for reporting? (-)

- Whether the reporters be allowed to see the judgment? (Yes)

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IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 720 of 2002 (M/B)

M/s Kedar Nath Bishan Lal (HUF),
Through its Karta, Manglore Town,
Roorkee. …….. Petitioner

Versus

Income Tax Officer,
Ward 1, Roorkee & others. …… Respondents

Mr. Tehmina Punvani, learned senior counsel on behalf of the petitioner.
Mr. Pitamber Maulekhi, learned Standing Counsel on behalf of respondents.

Hon. V.S. Sripurkar, C.J.
Hon. Irshad Hussain, J.

1. Heard Ms. Tehmina Punvani, learned senior counsel on behalf of the petitioner and Mr. Pitamber Maulekhi, learned Standing Counsel on behalf of the respondents.

2. In this writ petition, the petitioner, which is an HUF, challenges the notices issued under Section 148 read with Section 147 of the Income Tax Act dated 23.4.2001, 4.5.2001 and 25.5.2001 filed as Annexures 13, 14 and 15 to the writ petition. In addition to this, the petitioner has also challenged the notices dated 21.2.2002 and 4/11.9.2002 issued under Section 142(1) filed as Annexures 20 & 22 to the writ petition.

3. The said notices pertained to the assessment years beginning from 1991-92 to 2001-2002. They were given by the assessing authority as the assessing authority had reasons to believe that some income, chargeable to the tax, had escaped the assessment within the meaning of Section 147 of the Income Tax Act. The notices were challenged on the ground that initially those reasons were not supplied by the assessing authority and, though supplied later on, were not valid reasons as such, the notices were without jurisdiction.

4. On 19.12.2002 the Division Bench of this Court Hon'ble A.A. Desai, C.J. and Hon'ble M.M. Ghildiyal, J. passed the following order:

> "Heard Ms. T. Punwani, learned counsel for the petitioner and Sri S.K. Posti, learned counsel for the respondents.
>
> This assessment pursuant to the notice impugned herein to proceed. However, final order of assessment shall not take effect till further orders of this Court.
>
> List in the third week of March, 2003."

5. After this, the writ petition pended and today, it has, again, come up for hearing. In the meantime, however, as per the statement made before us by learned Standing Counsel for the Department, the proceedings for final assessment are already over. However, only the orders have so far not been passed in reference of the interim order given on 19.12.2002.

6. In view of the fact that, firstly, the notices are issued in the year 2001 and secondly, the proceedings under those notices, having been completed (of course without passing any final orders), we do not think that we would use our discretion under Article 226 of the Constitution of India now to go into the validity of reasons.

7. Ms. Tehmina Punvani, learned senior counsel appearing on behalf of the petitioner pointed out that the only reason given was based on the decision by the Supreme Court reported in 245 ITR 2; CIT Vs Gopal Bansilal Inani. She submitted that this decision was made the basis for reopening the assessment on the ground that in this decision, the Supreme Court had not permitted the deduction of the interest paid by the HUF to its components at the hands of the assessee. However, the learned counsel is at pains to point out that the decision was not correctly read by the Authorities concerned as the said decision was a fall out of the earlier decision of the Supreme Court reported in 239 ITR 514; CIT Vs Venugopal Inani. According to the learned counsel, the Supreme Court, in the subsequent decision reported in 245 ITR 2, had noted the fact there was not partition in

the HUF and under the circumstances, disallowed the interest paid by the HUF to its components holding that such interest amounted to the payment to HUF only. The learned counsel, therefore, points out that in this case however, there was a partition, which was an accepted fact by the earlier authorities for good long 40 years. She points out that had this been noticed by the Commissioner of Income Tax, who granted the approval for issuance of notices or as the case may be, by the assessment authority, then, the notices under re-assessment would not have been given as there would not have been any valid reasons available to the assessing authority to issue the notices.

8. In our opinion, it will not be our task, now, to examine the correctness or otherwise of the reasons, which are based on the Supreme Court decision cited supra. We desist from giving any finding on the correctness of the reasons because even that question will be open for the assessee to raise before the assessing authority and we have no doubts that in the assessment proceedings that question can always be raised. Be that as it may, we will simply not go into that question in view of the fact that the proceedings for assessment are already over, excepting that the orders are yet to be passed. We keep this question open to be raised before the Income Tax Authorities at the initial or as the case may be, at the appellate stage also so that it would be open to the assessee to show that the notice under Section 148 of the Act, itself, was not warranted. In view of that, we will not go into the question of the interpretation of the Supreme Court judgment reported in 245 ITR 2. It will be for the authorities in the Income Tax Department to interpret the judgment and to act upon the same according to law.

9. Writ these observations, the writ petition is disposed of.

(Irshad Hussain, J.) **(V.S. Sirpurkar, C.J.)**
01.10.2004 **01.10.2004**

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